

Message Text

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ACTION L-03

INFO OCT-01 ARA-10 ISO-00 JUSE-00 SSO-00 SCS-06 CA-01
/021 W

-----108943 010102Z /66

O 010034Z FEB 78

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 7932

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FOR L - MR. DALTON
PASS JUSTICE - MR. ABBELL

E. O. 11652: N/A

TAGS: CARR, PFOR, MX

SUBJECT: U. S. MEXICO TREATY ON EXECUTION OF PENAL
SENTENCES - IMPLEMENTATION OF ARTICLE VIII (2).

1. DURING MEETINGS BETWEEN JUSTICE DEPARTMENT COORDI-
NATOR FOR PRISONER TRANSFER PROGRAM, EMBASSY REPRE-
SENTATIVES AND EXECUTIVE OFFICER OF ATTORNEY GENERAL,
QUESTION WAS RAISED WITH RESPECT TO IMPLEMENTING
PROVISION ON TRANSFER OF MENTALLY INCOMPETENT PERSONS.
JUSTICE REPRESENTATIVE INDICATED THAT HE THOUGHT IT
APPROPRIATE TO HAVE AN AGREEMENT ON THE SUBJECT WHICH
COULD BE IMPLEMENTED IN EACH CASE RATHER THAN ON A CASE
BY CASE BASIS.

2. TEXT BELOW IS AGREEMENT DRAFTED BY JUSTICE REPRE-
SENTATIVE WITH SOME EMBASSY ALTERATIONS AND ON
WHICH EMBASSY IS REQUESTING EXPEDITIOUS AUTHORIZATION
TO NEGOTIATE AND SIGN.

3. ARTICLE VIII PARA 2 OF TREATY PROVIDES FOR A "SPE-
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CIAL AGREEMENT BETWEEN THE PARTIES" AND THIS TAKEN
WITH IMPLEMENTING LEGISLATION WHEREIN THE ATTORNEY
GENERAL IS DESIGNATED AS THE COMPETENT PERSON IN
TRANSFER MATTERS SHOULD, IN VIEW EMBASSY LEGAL ADVISER,
BE SUFFICIENT LEGAL BASIS FOR THE NEGOTIATION OF THE
AGREEMENT.

4. FOLLOWING IS DRAFT TEXT: BEGIN QUOTE - SPECIAL AGREEMENT DEALING WITH THE TRANSFER OF MENTALLY ILL NATIONALS UNDER THE TREATY ON THE EXECUTION OF PENAL SENTENCES.

WHEREAS, ARTICLE VIII (2) OF THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON THE EXECUTION OF PENAL SENTENCES DONE AT MEXICO CITY NOVEMBER 25, 1976, PROVIDES THAT THE PARTIES MAY ENTER INTO A SPECIAL AGREEMENT FOR THE TRANSFER OF PERSONS ACCUSED OF AN OFFENSE BUT DETERMINED TO BE OF UNSOUND MENTAL CONDITION FOR CARE IN INSTITUTIONS IN THE COUNTRY OF NATIONALITY; AND,
WHEREAS, THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA AND THE PROCURADOR GENERAL OF THE UNITED MEXICAN STATES HAVE BEEN DESIGNATED BY THEIR RESPECTIVE GOVERNMENTS AS THE AUTHORITIES TO PERFORM THE FUNCTIONS PROVIDED IN THE TREATY PURSUANT TO ARTICLE III OF THE TREATY;

IT IS HEREBY AGREED BY THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA AND BY THE PROCURADOR GENERAL OF THE UNITED MEXICAN STATES THAT:

I. CASES INVOLVING MENTALLY ILL NATIONALS OF EITHER STATE WHO HAVE BEEN CHARGED WITH A CRIME WILL BE PROCESSED IN THE FOLLOWING MANNER:
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A) IN THE CASE OF A NATIONAL OF THE UNITED STATES CHARGED WITH A CRIME BY MEXICO, OR A MEXICAN NATIONAL CHARGED BY THE UNITED STATES, THE EMBASSY OF THE PARTICULAR NATIONAL WILL PETITION THE AUTHORITY OF THE TRANSFERRING STATE, FOR THE TRANSFER OF SUCH MENTALLY ILL NATIONAL. IF SUCH AUTHORITY FINDS THE TRANSFER TO BE APPROPRIATE, IT WILL TURN OVER CUSTODY OF SUCH PERSON TO THE NATIONAL'S EMBASSY FOR TRANSFER TO HIS COUNTRY OF NATIONALITY FOR TREATMENT IN ACCORDANCE WITH ITS LAWS.

B) IN THE CASE OF A MENTALLY ILL NATIONAL OF EITHER COUNTRY CHARGED WITH A STATE CRIME, THE NATIONAL'S EMBASSY WILL PETITION FOR THE TRANSFER OF SUCH PERSON TO THE AUTHORITY OF THE TRANSFERRING STATE AND THAT AUTHORITY AGREES TO INVESTIGATE THE MATTER AND IF IT FINDS THE REQUEST TO BE WARRANTED, TO EXERT ITS BEST EFFORTS TO SECURING THE TRANSFER OF SUCH PRISONER. IF APPROVED, THE TRANSFER OF CUSTODY SHALL BE MADE TO THE NATIONAL'S EMBASSY FOR TREATMENT IN ACCORDANCE WITH ITS LAWS.

II. CASES INVOLVING MENTALLY ILL NATIONALS OF EITHER COUNTRY WHO HAVE BEEN CONVICTED OR SENTENCED FOR A CRIME WILL BE PROCESSED IN THE FOLLOWING MANNER:

A) IN THE CASE OF A NATIONAL OF THE UNITED STATES CONVICTED OR SENTENCED FOR A CRIME BY MEXICO, OR A MEXICAN NATIONAL CONVICTED OR SENTENCED BY THE UNITED STATES, THE EMBASSY OF THE PARTICULAR NATIONAL WILL PETITION THE AUTHORITY OF THE TRANSFERRING STATE FOR THE TRANSFER OF SUCH MENTALLY ILL NATIONAL. IF SUCH

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AUTHORITY FINDS THE TRANSFER TO BE APPROPRIATE, IT WILL TURN OVER CUSTODY OF SUCH PERSON AS OUTLINED BELOW.

B) IN THE CASE OF A MENTALLY ILL NATIONAL OF EITHER COUNTRY CONVICTED OR SENTENCED FOR A STATE CRIME, THE NATIONAL'S EMBASSY MAY PETITION FOR THE TRANSFER OF SUCH PERSON TO THE AUTHORITY OF THE TRANSFERRING STATE, AND SUCH AUTHORITY AGREES TO INVESTIGATE THE MATTER AND IF IT FINDS THE REQUEST TO BE WARRANTED, TO EXERT ITS BEST EFFORTS TO SECURING THE TRANSFER OF SUCH PRISONER.

IN THE CASE OF SUBPARAGRAPHS A) AND B) OF THIS PARAGRAPH, THE PETITION FOR TRANSFER SHALL BE PROCESSED THROUGH A GUARDIAN APPOINTED FOR SUCH PURPOSE BY AN APPROPRIATE COURT IN EITHER STATE. IF THE TRANSFER IS FOUND TO BE WARRANTED, THE DULY APPOINTED GUARDIAN WILL HAVE THE AUTHORITY TO ACT ON BEHALF OF SUCH OFFENDER WITH RESPECT TO ALL MATTERS AND PROCEEDINGS

RELATING TO SUCH OFFENDER'S TRANSFER UNDER THE TREATY.
THE TRANSFER OF SUCH MENTALLY ILL NATIONAL IN ALL OTHER
ASPECTS WILL BE PROCESSED IN THE SAME MANNER AS THE
TRANSFER OF OTHER OFFENDERS OF THE LAWS OF THE RES-
PECTIVE COUNTRY UNDER THE TREATY.
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DONE AT MEXICO CITY IN DUPLICATE, THIS (DATE) DAY OF
FEBRUARY, ONE THOUSAND NINE HUNDRED AND SEVENTY
EIGHT, IN THE ENGLISH AND SPANISH LANGUAGES, EACH
BEING EQUALLY AUTHENTIC.

FOR THE UNITED STATES FOR THE PROCURADURIA GENERAL
DEPARTMENT OF JUSTICE: OF THE UNITED MEXICAN STATES:
END QUOTE. LUCEY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRISONER EXCHANGE, AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 01 feb 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978MEXICO01764
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780047-0016
Format: TEL
From: MEXICO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197802107/aaaadmgm.tel
Line Count: 190
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 356c08ce-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Date: 18 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3443878
Secure: OPEN
Status: NATIVE
Subject: U. S. MEXICO TREATY ON EXECUTION OF PENAL SENTENCES - IMPLEMENTATION OF ARTICLE VIII (2).
TAGS: CARR, PFOR, PORS, MX, US
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/356c08ce-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014